

**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

No. 18678 ✓

JOHN W. WHALEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court  
Southern District of California  
Southern Division

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APPELLANT'S REPLY BRIEF

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In The  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 18678  
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JOHN WILLIAM WHALEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.  
  
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APPELLANT'S REPLY BRIEF  
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I.

JURISDICTIONAL STATEMENT.

This is an appeal from a judgment of the United States District Court for the Southern District of California adjudging appellant to be guilty as charged in an indictment following a jury trial. The offense occurred in the Southern Division of the Southern District of California; the District Court had jurisdiction by virtue of Title 18, United States Code, Section 3231. This Court has jurisdiction to entertain this appeal from the judgment under Sections 1291 and 1294 of Title 28, United States Code.



## ARGUMENT

## A. The Trial Court Erred In Its Instructions

Respondent claims that the instructions given by the Court were clear and unambiguous.

For some unknown reason, the record does not show that the Court in its chambers advised both the Assistant U. S. Attorney and Defense Counsel that it was not necessary to furnish him (the Court) with instructions, as the Court usually disregards said instructions and gives his own. At no time was Appellant given the opportunity to object to the instructions given by the Court, as said Court instructed the jury "off the cuff" without any notes or memo that was visible to Counsel. Therefore, it was extremely difficult, if not impossible, to object to the instructions given to the jury as required by Rule 30, 18 U.S.C.A.

The Defense contends that what has been stated above is, in fact, the truth. Secondly, instructions are given for the purpose of aiding the jury in arriving at their conclusion. It is quite clear that the instructions must be unambiguous and clear in order that the jury may understand what is being stated. There is a great deal of authority for this and Appellant will not presume upon this Court to state these general rules of law and the citations therefor. There are cases that hold that when an erroneous instruction is given, the giving of an additional instruction has cleared the record. However, in the light of the instructions given in the herein case, Appellant contends that they were so contradictory and so ambiguous that a jury comprised of reasonable men and women could not adequately follow same, particularly in the light of the crucial issues herein; namely, "the duty of a Defendant in the case of false representations."





The theory of the Defendant in a trial must be stated to the jury by Court in its instructions clearly and completely.

MAYNARD v. UNITED STATES, 215 F.2d 336.

Appellant contends that the instructions given to the jury, particularly the last instruction which was given to the jury after they were already deliberating was prejudicial to the Appellant.

#### B. The Conditions Of Probation Were Unreasonable

The Appellant is an ex-police officer who is engaged in the repossession business for the last eleven years. This is his sole means of making a living. At the time that he was repossessing automobiles on behalf of Pacific Coast Claims Adjusters, he was also employed by a private detective agency known as the National Bureau of Investigation. It was his contact with this second business that Appellee got him into trouble, i. e., using the name National Bureau of Investigation. This case is not similar to Federal cases cited wherein the Appellant was engaged in an unlawful business such as bookmaking, gambling, etc. Appellant has continued to conduct his business up to the present moment without complaint of any sort. Therefore, it is contended that notwithstanding the fact the Court has the power to use reasonable methods as a condition of probation to prevent a person from conducting a particular business, the imposition in the herein case restricting Appellant WHALEY from continuing in the repossession business is unjust, unreasonable, and can only deprive him and his family of a living in which the Appellant has worked for many years.

It is therefore respectfully alleged that the condition of the probation herein



restricting Appellant from working in his repossession business should be modified. The Court sentenced the Appellant and after the sentencing was completed, the U. S. Attorney requested the Court to insert this additional condition, which the Court granted.

### III.

#### CONCLUSION

For the foregoing reasons it is respectfully submitted that the verdict of guilty in the Court below should be reversed.

Respectfully submitted,

ROCK ZAITZOW,

Attorney for Appellant



## CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

ROCK ZAITZOW

Attorney for Appellant.

